

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 1:94CR001

REGINALD E. GREEN

ORDER

Presently before the court is the defendant's Notice of Appeal filed on May 14, 2012. In the Notice of Appeal, the defendant requests an extension to file said notice, asserting that he never received a copy of this court's March 2, 2012 order denying the defendant's motion for sentence reduction pursuant to 18 U.S.C. § 3852(c)(2). The defendant also mailed a letter to the court, received on the same date – May 14, 2012 – requesting a copy of said order.

Rule 4(b)(1)(A) of the Federal Rules of Appellate Procedure requires a defendant to file a notice of appeal within fourteen days of the entry of judgment. The defendant's Notice of Appeal is, therefore, untimely. Rule 4(b)(4) of the Federal Rules of Appellate Procedure, however, allows a district court to grant a defendant an additional thirty days to file a notice of appeal if the court finds "excusable neglect" or "good cause." The Fifth Circuit customarily allows a late notice of appeal filed after the expiration of the fourteen-day period and before the lapse of the additional thirty day period to be treated "as a motion for a determination as to whether excusable neglect entitles a defendant to an extension of time to appeal." *United States v. Awalt*, 728 F.2d 704, 705 (5th Cir. 1984). "To have the opportunity to seek relief by showing excusable neglect, the late notice or some other filing evidencing an intention to appeal must be filed within" the forty-four day period (fourteen plus thirty days). *Id.* The defendant's Notice of Appeal was filed well outside this period, and the defendant "has no right to seek relief by showing excusable neglect." *Id.*

Further, even if the Notice of Appeal had been filed within the forty-four day period, the defendant would not be entitled to relief on the ground that he did not receive a copy of the court's March 2, 2012 order. The Fifth Circuit held in *Awalt, supra*, that "[l]ack of notice is not a basis for a plea of excusable neglect and does not excuse noncompliance with Rule 4(b)." *Id.*

Accordingly, the court finds that the defendant has failed to show excusable neglect or good cause for the late filing of his Notice of Appeal, and his appeal should not be allowed.

SO ORDERED AND ADJUDGED this, the 24th day of May, 2012.

/s/ Neal Biggers
NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE